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Attorneys for Defendant BETSEY JOHNSON, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ELIZABETH McCOY, individually and on behalf of herself and all others similarly situated.

**Plaintiff,**

V.

BETSEY JOHNSON INC.; Does 1 through 10,

## Defendants.

CASE NO. C 07-04782 SC

## **ANSWER OF BETSEY JOHNSON INC. TO CLASS ACTION COMPLAINT**

Judge: Hon. Samuel Conti

Defendant Betsey Johnson Inc. ("Betsey Johnson") for itself alone, hereby answers the Class Action Complaint ("Complaint") filed by plaintiff Elizabeth McCoy as follows:

## **NATURE OF THE ACTION**

1. Answering Paragraph 1, Betsey Johnson admits that it has printed expiration dates on some credit and/or debit card receipts, but denies that it has printed more than the last five digits of credit or debit card receipts in violation of FACTA and denies that it has "willfully and repeatedly violated § 1681c(g)." Betsey Johnson otherwise is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 1 and therefore denies those allegations on that basis.

## THE PARTIES

2. Betsey Johnson is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 2.

3. Betsey Johnson admits the allegations of Paragraph 3.

4. Betsey Johnson is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 4.

## **JURISDICTION AND VENUE**

5. Betsey Johnson admits the allegations of Paragraph 5.

6. Betsey Johnson denies that it has engaged in any wrongdoing but admits that it is subject to personal jurisdiction. Betsey Johnson otherwise is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 6.

7. Betsey Johnson admits that venue is proper.

## **INTRADISTRICT ASSIGNMENT**

8. Betsey Johnson is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 8.

## **FACTUAL BACKGROUND**

9. Betsey Johnson admits that FACTA became effective December 4, 2006, that portions of FACTA concern the printing of credit and/or debit card information on customer receipts, and that different rules apply to cash registers first put into use after January 1, 2005. Betsey Johnson otherwise is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 9.

10. Betsey Johnson is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 10 and therefore denies those allegations on that basis.

**PLAINTIFF ELIZABETH MCCOY**

11. Betsey Johnson admits that it provided plaintiff with a receipt that contained the expiration date of her credit or debit card, but denies that this act subjects it to liability under FACTA because the act was not willful and plaintiff suffered no damage.

## CLASS ACTION ALLEGATIONS

12. Betsey Johnson denies the allegations of Paragraph 12.

13. Betsey Johnson admits that after January 1, 2005, it printed the expiration

1 date on some customer credit or debit card receipts, but denies each and every remaining allegation  
2 in Paragraph 13.

3 14. Betsey Johnson admits that after December 4, 2006, it printed the expiration  
4 date on some customer credit or debit card receipts, but denies each and every remaining allegation  
5 in Paragraph 14.

6 15. Betsey Johnson denies the allegations of Paragraph 15.

7 16. Betsey Johnson is without knowledge or information sufficient to form a  
8 belief as to the truth or falsity of the allegations of Paragraph 16 and therefore denies those  
9 allegations on that basis.

10 17. Betsey Johnson is without knowledge or information sufficient to form a  
11 belief as to the truth or falsity of the allegations of Paragraph 17 and therefore denies those  
12 allegations on that basis.

13 18. Betsey Johnson denies the allegations of Paragraph 18.

14 19. Betsey Johnson denies the allegations of Paragraph 19.

15 20. Betsey Johnson admits that the putative class would satisfy the numerosity  
16 requirement of Rule 23(a)(1) but is otherwise without knowledge or information sufficient to form a  
17 belief as to the truth or falsity of the allegations of Paragraph 20 and therefore denies those  
18 allegations on that basis.

19 21. Betsey Johnson is without knowledge or information sufficient to form a  
20 belief as to the truth or falsity of the allegations of Paragraph 21 and therefore denies those  
21 allegations on that basis.

22 22. Betsey Johnson is without knowledge or information sufficient to form a  
23 belief as to the truth or falsity of the allegations of Paragraph 22 and therefore denies those  
24 allegations on that basis.

25 23. Betsey Johnson is without knowledge or information sufficient to form a  
26 belief as to the truth or falsity of the allegations of Paragraph 23 and therefore denies those  
27 allegations on that basis.

28 24. Betsey Johnson denies the allegations of Paragraph 24.

25. Betsey Johnson denies the allegations of Paragraph 25.

## **CLAIM FOR RELIEF**

26. Betsey Johnson is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 26 and therefore denies those allegations on that basis.

27. Betsey Johnson admits that it printed the expiration date on some customer credit or debit card receipts, but otherwise denies each and every remaining allegation in Paragraph 27.

28. Betsey Johnson denies the allegations of Paragraph 28.

29. Betsey Johnson denies the allegations of Paragraph 29.

30. Betsey Johnson denies the allegations of Paragraph 30.

## **AFFIRMATIVE DEFENSES**

## **FIRST AFFIRMATIVE DEFENSE**

**(Failure To State A Claim)**

The Complaint fails to state a cause of action against Betsey Johnson upon which relief can be granted.

## SECOND AFFIRMATIVE DEFENSE

### (Insufficient Class Allegations)

The claim for relief is not appropriate for class treatment because the requirements of Rule 23(a) and Rule 23(b) are not met.

### THIRD AFFIRMATIVE DEFENSE

### (No Substantial Benefit from Class Treatment)

Plaintiff fails to show any substantial benefit can be gained from class certification.

## FOURTH AFFIRMATIVE DEFENSE

**(Release and Waiver)**

Plaintiff has, by her acts and omissions, engaged in conduct which constitutes a release and waiver of the claims against Betsey Johnson contained in the Complaint, and in each and every cause of action therein.

**FIFTH AFFIRMATIVE DEFENSE**

(Estopel)

3 Plaintiff is, by her acts and omissions, estopped and precluded from asserting against  
 4 Betsey Johnson the claims contained in the Complaint.

**SIXTH AFFIRMATIVE DEFENSE**

(Unclean Hands)

7 The Complaint against Betsey Johnson is barred by the unclean hands of Plaintiff.

**SEVENTH AFFIRMATIVE DEFENSE**

(Failure to Mitigate Damages)

10 The Complaint against Betsey Johnson is barred (or its damages, if any, should be  
 11 reduced) because Plaintiff failed to act reasonably and appropriately to mitigate damages she  
 12 suffered, if any.

**EIGHTH AFFIRMATIVE DEFENSE**

(Lack of Proximate Cause)

15 The Complaint, and each and every cause of action therein, against Betsey Johnson  
 16 is barred because the alleged acts and/or omissions of Betsey Johnson were not the actual or  
 17 proximate cause of the damages, if any, allegedly suffered by Plaintiff.

**NINTH AFFIRMATIVE DEFENSE**

(Reservations of Affirmative Defenses)

20 Betsey Johnson has insufficient knowledge or information upon which to form a  
 21 belief as to whether it may have additional, as yet unstated, separate defenses available and hence  
 22 reserves the right to amend this Answer to add, delete, or modify defenses based upon legal theories  
 23 that may or will be divulged through discovery or the factual bases for plaintiff's claims or further  
 24 legal analysis.

25 WHEREFORE, Betsey Johnson prays for judgment as follows:

26 1. That the Complaint and each claim for relief therein be dismissed with  
 27 prejudice;

28 2. That plaintiff take nothing by her Complaint;

1                   3. That Betsey Johnson be awarded its costs incurred herein, including attorney  
2 fees; and

3                   4. That the Court order such other and further relief for Betsey Johnson as the  
4 Court may deem just and proper.

5  
6 DATED: January 31, 2008

JEFFER, MANGELS, BUTLER & MARMARO LLP  
MICHAEL J. HASSEN

7  
8 By: /s/ Michael J. Hassen  
9                   MICHAEL J. HASSEN  
10                  Attorneys for Defendant BETSEY JOHNSON, INC.

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